FILED
OCT 26 2009
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA ex rel MAGDALIS LOPEZ, Plaintiff/Relator,	)	
v.	)	**Civil Action No. 1:08-cv-589**
STRAYER EDUCATION, INC., STRAYER UNIVERTISY, INC., Defendants.	)	

ORDER

This matter comes before the Court on Defendants' Motion to Dismiss (Dkt. no. 15) pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 9(b). Upon consideration of the motion and Plaintiff's response thereto, and for the reasons stated below, it is hereby ORDERED that Defendants' Motion to Dismiss (Dkt. no 15) is DENIED.

Under Fed. R. Civ. P. 12(b)(6) an adequate Complaint must contain "sufficient factual matter, accepted as true 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007)). A claim is "facially plausible" when a plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Further, because claims brought under the False Claims Act ("FCA") implicate allegations of fraud, Fed. R. Civ. P. 9(b) elevates the pleading standard applicable to FCA claims. *See U.S. ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 379 (4th Cir. 2008); *United States ex rel. Elms v. Accenture LLP*, 2009 WL 2189795, at *2 (4th Cir. July 22, 2009).

In their respective briefs, the parties dispute: i) whether the heightened pleading standards of Fed. R. Civ. P. 9(b) apply to the underlying alleged violations of 20 U.S.C. §109(a)(20)'s "incentive compensation ban," and ii) whether Plaintiff must "plead around" the "safe harbor" provisions of 34 C.F.R. § 668.14(a)(22)(ii)(2). However, even assuming, *arguendo*, that the heightened requirements of Fed. R. Civ. P. 9(b) apply wholesale and that Plaintiff must "plead around" the provisions of 34 C.F.R. § 668.14(a)(22)(ii)(2), Plaintiff's Complaint still adequately states a claim upon which relief can be granted under the particularized allegations of fraud therein. Accordingly, Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 9(b) is DENIED.

It is so ORDERED.

ENTERED this 26th day of October, 2009.

Alexandria, Virginia

/s/ log
Liam O'Grady
United States District Judge